**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA.No.336 of 1993

DATE OF ORDER:

State of Punjab

...Petitioner(s)

Versus

Om Parkash

....Respondent(s)

**CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL**

**.*.*.*.**

Present: Mr. Neelofer A Parveen, AAG, Punjab.

Mr. Arun Bakshi, Advocate.

**M.M. AGGARWAL,J**

Om Parkash, who was working as Head Constable in Punjab Police had been dismissed from service by SSP, Ludhiana vide order dated 29.7.1985. He had filed departmental appeal, which was dismissed by DIG, Patiala Range, Patiala vide order dated 25.10.1985. He further filed a revision petition against that order, which was dismissed by I.G on 6.5.1986. Thereafter, he filed a civil suit for declaration challenging these orders and then his suit was decreed by the Sub Judge, Second Class, Jalandhar on 8.8.1991. State of Punjab had filed appeal, which was dismissed and thereafter this regular second appeal was filed.

Case of the plaintiff, now respondent was that vide impugned order dated 29.7.1985 dismissing him from service, the period of absence had been treated as leave without pay, which will show that absence had been condoned/regularized and then no order of dismissal could be made.

The law point involved in this case is whether the plaintiff-respondent could be dismissed from service when the period of absence of duty has been allowed to be treated as leave without pay.

On behalf of the State, it was argued that the inquiry in this case had been conducted, and there was inquiry report against him and he

had been dismissed because he remained absent.

On behalf of the respondent-plaintiff, it was pointed out and argued that from para No.13 of judgment of the trial Court that the Inquiry Officer had admitted during cross-examination that he did not give the copies of absence report or arrival report or the report of absence on the basis of which inquiry had started. However, DSP, who was inquiry officer had stated that he had given copies of summary of allegations and gave time to the plaintiff to note down anything, he liked.

On behalf of the plaintiff-respondent, it was argued that as per rule 16.21, dismissal could be only for gravest act of misconduct, which was incorrigibility and proving unfitness for police service and in that case Superintendent of Police was to take into account length of service of the offender and his claim to pension.

Merely because copies of absent report and arrival reports were not given, will not mean that there was any prejudice to the plaintiff, now respondent. Inquiry Officer had stated that he had given copy of summary of allegations and had asked the plaintiff to note down anything, he liked from the file.

From the perusal of the punishment order, it would come out that the plaintiff had remained absent from duty for 39 days, 04 hours and 10 minutes. Plaintiff-respondent had taken plea that he had fallen sick but he could not produce any document. The Punishing Authority observed that if he was sick, he could very well appear before his Officer In charge or the DSP and apply for leave and when he remained absent for such a long time, then it was violation of police discipline and required punishment. As such, order of dismissal had been made. However, in the last line, it was written that period of absence, which was 40 days, shall be treated as leave without pay. Plaintiff had filed appeal against that order, which was dismissed by DIG, Patiala Range, Patiala vide detailed order and revision was also dismissed.

Punishment order will show that the order was for dismissal, which was made on merits of the case and then the last line was written that period of absence of 40 days would be treated as leave without pay. Hon'ble Supreme Court in a judgment reported in Delhi Transport Corporation v. Sardar Singh, 2004(4), RSJ 107 had held that treating the

period of leave without pay does not mean that leave had been sanctioned or approved. In another judgment of Hon'ble Supreme Court reported in Maan Singh v. Union of India and Others, (2003) 3, SCC 464, it had been held that where a Constable remained absent then it will be the misconduct of gravest kind. Judgment relied by counsel for the plaintiff-respondent in JT 1998(7) SC 142, The State of Punjab & Ors v. Bakshish Singh is not applicable to the facts of the case.

Merely because the period of absence had been directed to be treated as leave of the kind due, it will not mean that the leave had been sanctioned or absence had been condoned.

Under these circumstances, order of punishment could not be set aside. There is merit in the appeal and the same is accepted. Judgments of the Lower Courts are set aside. Suit of the plaintiff shall stand dismissed.

February , 2007 ( M.M. AGGARWAL )
manoj JUDGE